IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

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SUPREME COURT, U.S.

No. 82-118

CROWN, CORK & SEAL COMPANY, INC., PETITIONER

v.

THEODORE PARKER

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

ANSWER IN OPPOSITION TO MOTION FOR DIVIDED ARGUMENT

Pursuant to Rule 42.4 of the Rules of this Court, the Petitioner, by its counsel, opposes the Motion of the Solicitor General, on behalf of the Equal Employment Opportunity Commission, for leave to divide the oral argument between the Respondent and the Equal Employment Opportunity Commission, and as grounds for same, respectfully represents as follows:

1. The Motion for Divided Argument was not filed within the prescribed time.

Rule 38.7 of the Rules of this Court permits counsel for an amicus curiae, with the consent of a party, to move for leave to argue orally on the side of such party, such motion being subject to paragraph .4 of Rule 38. Paragraph .4 provides that such request be filed no later than fifteen days after the filing of the Petitioner's or Appellant's brief on the merits. Petitioner's brief was filed on December 22, 1982 and the Motion to Divide Argument was filed on or about February 16, 1983. The Motion is therefore not timely.

2. The Motion fails to show why more than one counsel should be heard.

Rule 38.4 provides that the motion requesting divided argument show with specificity and conciseness why it should be granted. Paragraph .7 further provides that the motion set forth why such argument is thought to provide assistance to the Court not otherwise available. These Rules also provide that divided arguments are not favored and will be allowed only in the most extraordinary circumstances. The Motion of the Solicitor General is broad and general and fails to meet the requirements of the Rule.

Argument by the Solicitor General will provide no additional assistance to the Court since the Solicitor General has adopted in his Brief precisely the position of the Respondent and is merely corroborative and expansive of that position. The position of the Solicitor General adds no new or different issue and therefore is purely cumulative.

3. The interest of the Equal Employment Opportunity Commission is not sufficient to justify argument by its counsel.

While Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000 (e), et seq., unquestionably places responsibility for enforcement of private rights initially with the Commission, once the Commission has reached its determination (in this case, that no reasonable cause existed) and serves its 90-day Notice of Right to Sue upon the charging party, it has no further interest in that Complaint and has in fact relinquished jurisdiction. Since the issue in the pending Petition deals solely with the tolling of the statute of limitations as to individual private actions brought after relinquishing jurisdiction, the interest of the Commission is not sufficient to justify argument by its counsel as amicus curiae.

4. The granting of the Motion would be unfair to the Petitioner.

To allow a division of argument between the Respondent and the Commission as amicus curiae without granting the same privilege to Petitioner would be unfair and inequitable and would disadvantage the Petitioner in its oral argument.

The Petitioner, therefore, requests that the Motion to Divide Argument be denied, or in the alternative, that if the Motion is granted, the Petitioner be granted leave to divide its argument as well.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of February, 1983, a copy of the foregoing Answer to Motion for Divided Argument was mailed by United States mail, first class, postage prepaid, to the following persons who represent all parties to be served:

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